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THE

TWO SPEECHES

OF

R. King Cutler, Esq.

ON THE MATTER

OF

Mr. Thomas P. May,

ARRAIGNED AT THE BAR

OF THE

Louisiana State Constitutional Convention

FOR CONTEMPT.

July 22d and 23d, 1864.

Published by the friends of R. King Cutler, Esq.

NEW ORLEANS:
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1864.

SYNOPSIS

OF THE

CASE OF MR. MAY.

In the issue of the "*New Orleans Times*" of July 22d, 1864, a newspaper published by Thomas P. May & Co., an editorial article appeared, reflecting in terms of great severity upon the conduct of the President and Members of the Louisiana State Constitutional Convention, at their session on the previous day. Upon the assembling of the Convention on that day, the President arose to a question of privilege, and called the attention of the Convention "to a scurrilous article published in the newspaper called the New Orleans *Times*, of this date," which he declared to be a libel "against himself and this Convention," whereupon Mr. Stauffer offered the following resolution :

"*Resolved*, That the sergeant-at-arms be ordered to take immediate possession of the paper called the New

Orleans *Times*, and that the publication of the paper be suspended until its responsible editor, Thomas P. May, Esq., appear before this Convention and purge himself of the *libel* he has published in the issue of this date regarding the proceedings of this Convention of the 21st of July, 1864."

ADDRESS OF JUDGE R. KING CUTLER.

While this motion was pending Mr. Cutler arose and said:

Mr. President and Gentlemen of the Convention: I have a substitute for this resolution, but before offering it, it may be well for me to make a few remarks, to which I beg your attention. I am convinced, Sir! that we are here for the purpose of doing justice to all classes of men within the sphere of our action, and that Mr. May is amenable to this body, although the Constitution of the United States as well as that of our own State reads thus: "The press shall be free. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for an abuse of this liberty."

There being, on this particular occasion, no question, in my mind, but that there was not only an abuse of this privilege, but a serious outrage, on the part of

the editor of the *Times*. We have then a Constitutional Provision, that although a man may freely speak and write, yet he is responsible for any wrong he may commit. If this is true, Sir, when he abuses an individual; how much greater is the responsibility when this body is assailed, not because of us who are the members of it, but, Sir, it is a political body and has a political existence. It is because of this political existence that the papers which publish our proceedings should disseminate the truth, and nothing but the truth. (Applause.) Now, Sir, I was an eye witness to the transactions which took place here yesterday, and I freely assert that in the Halls of Congress many scenes far more reprehensible have been enacted and acts in themselves far worse been committed, not only by the Speaker of the House and the President of the Senate, but by the Members of both Representative Houses. I dare say, that there never was a deliberative body, composed of as many members, and gathered from as many different sources, sitting either in any State of this Union, or any other portion of the civilized world, in which there were fewer instances of party wrangling and discord. The matter of yesterday was a consequence naturally resulting from a difference of opinion, of which I, to some extent, may have been the cause. The President, influenced by reasons which to him

seemed just and proper, was indisposed to put the motion at that particular moment, and he decided that it was out of order. This was perfectly within the scope of the President's authority. And again, when the gentleman (Mr. Purcell,) appealed from the decision of the chair, the President was perhaps still indisposed to put the motion. This also was a matter between him and the Convention.

Now, as an eye witness, I beg leave to state, that every word and sentence in that paper (exhibiting a copy of the *Times*) this morning, is a corrupt and base falsehood!

In the first place the President may have been correct in his decision, he told me that he did not see the gentleman, which is of itself a sufficient explanation. I may have been wrong in making my motion and the fifteen or twenty members who seconded me, may have also been wrong in doing so. But, be it right or be it wrong, does it amount to anything so extraordinarily disgraceful, as it has been construed to be by the enlightened copperhead editor of the "*Times?*" (Applause.) I say Sir! that these are trying times! The nearer the rebels get to this city, the prouder the copperheads become. It is time to put them down, and the nearer they come the louder they shall hear my voice raised against them. If it had not

been for the news placarded upon the *Times'* bulletin board yesterday, I do not believe that either the editor or reporter of that paper would have dared to insert this foul slander. My doctrine is to let the copperheads, rattlesnakes and rebels go down to hell together! (Applause.) Upon this Convention the whole public eye is cast, and when we have small wranglings or controversies in good humor, without any bad results, no paper should dare to publish such a villifying lie and slander in relation to it. We can get along, and conclude this great and noble work of making a Constitution, but if we are to have the press against us, abusing its power and privilege, then I say it is time to suppress that press.

But let us give every man a fair chance of being heard. I know the language in question to be false, —it is a calumny,—but still give every one a fair trial. Let its author be heard. I have no doubt but that Mr. May is a man, and if I had taken his position, I would show myself to be a man. Let him be sent for; let him come into this Convention and disclaim any intention of offering us an insult. When he does that, he should, in my opinion, be excused,—but if he does not—then suppress his paper. (Applause.) I believe this is due to the dignity of the State, and were I the Commanding General, with my limited knowledge, I think that

this paper (again exhibiting the *Times*,) would not today issue an afternoon edition. [Applause.] This is not only a blow at us as members, but it shows a disposition to thwart the noble ends and purposes for which we are congregated here. [Applause] Considering this critical juncture in national affairs, I denounce it as one of the most high handed outrages that could have been committed by any paper or editor upon a legislative body and therefore justifying the immediate action of this body. I offer then this substitute :

"*Resolved*, That Thomas P. May, editor of the New Orleans *Times*, be brought before this Convention forthwith by the sergeant-at-arms, and that he be required to purge himself of the contempt and libel on this body as published in the issue of July 22d, 1864, or that he be otherwise dealt with as the Convention may deem proper and just."

If he apologizes, we will excuse him, for I believe that the proper feelings of humanity exist in the heart of every man here; but if there is a refusal to apologize, then stop all such libels during the existence of this Convention. It has been said that "we have no power to do this." That is a very strange doctrine. Suppose Sir ! a party of disorderly persons, copperheads if you please, should combine to disturb by noise or otherwise this Convention. Could not, or would not

the President direct the sergeant-at-arms to arrest them and bring them before this Convention for punishment? For the power exists to send out and take any man who interrupts our proceedings or runs counter to them. We have a right to do this by resolution, and if upon trial the offender is found guilty, the President has the power to sentence him to imprisonment This power is not only vested in the Congress of the United States, and in the Legislature of every state, but in this body, and without it we would be a laughing-stock and scorn and unworthy of making a Constitution.

Thereupon the substitute offered by Mr. Cutler was adopted.

On the following day, July 23, the Sergeant-at-arms presented Thomas P. May, at the bar of the Convention. Mr. May was accompanied by Judge Whitaker as his counsel, Major W. W. Howe, Assistant Provost Marshal, and one or two personal friends. The President having read the resolutions passed on the day previous, asked Mr. May what reply he had to make. Thereupon that gentleman read the following paper:

"I am here with the Provost Marshal to obey a military order issued by Major Gen. Banks, and not in obedience to a resolution of this Convention. At the proper time, in the proper place, and in pursuance of

the forms of law, I will answer to any charge made against me and my paper, the *Times*."

A debate then ensued in which Mr. Henderson contended that the answer was an additional contempt.

ADDRESS OF MR. CUTLER.

Mr. Cutler arose and said—

Mr. President and Gentlemen of the Convention: I had not the distinguished honor of being present this morning, when the prisoner at the bar made his explanation to you and to this Convention. But I have been informed of the nature, character and extent of his apology and heartily concur with what has been heretofore remarked—that instead of its being an apology, it was a second contempt of the authority of this Convention. [Applause.] Mr. President, I admit that this is a very grave and important question, and one deserving the serious consideration of every Member of this Convention before the final action is taken thereon. The reasons why I take this view of the subject are simply these—that some three years this State and its Laws were swept away, and now when Louisiana is trying to return to that Government which is her proper source of origin, it is in my estimation highly improper, for

any man who pretends to maintain a character and position for loyalty, to thwart the slightest measure tending to that end. On this important question—on this important occasion, and on this all important day which is, I hope, to be the last of the meeting of this Body, the question presented is, shall the Acts and the Authority of this Convention be treated with contempt by any person in the State of Louisiana, or within the Federal lines? [Cries of "No!" "No!!"]

To Mr. Thomas P. May, in his character as a man and as a gentleman, I have not the slightest objection and no fault to find; but—he is responsible as the ostensible Editor of the Daily "*Times*" newspaper, he has published a scurrilous falsehood and a set of lies, infamous in their character, and pernicious in their influence against the action of this Convention. If this was only to affect us individually, I would not, so far as I am concerned, care a straw; I would not raise my voice to-day, if this was the case, but it affects the character of this body most immediately, and throws a great obstacle in the way of the adoption of the labors of this Convention by the people of Louisiana. Besides it is in bad taste. Suppose sir, that the immortal, the unparalleled and unequalled GRANT was to be on this day, or had on yesterday been announced as having taken Richmond, (and the day is

not far distant when that will be so announced,) [applause] and the "*Times*" had been disposed to publish that news to the people, let me ask you if it would have appeared in larger letters than did the disgraceful article in yesterday morning's issue? Was not that slander as emphatic and as largely displayed as would have been the eulogy and praise of Grant after the capture of Richmond? [Cries of "Yes" "Yes."] I do not know but that the characters used in the condemnation and denunciation of this Convention while discharging its duty were larger than they would have been on the occasion alluded to. Then sir, it is necessary for us faithfully and impartially to discharge our duty.

We must first inquire has this body the right to act as we propose? Is there any law by which the President of this Body can arrest Mr. Thos. P. May, the author of that scurrilous article and libel, or, is there no such authority? We find that Gen. Banks, in his attempt to re-frame this State, both by force of arms and by reproducing civil authority, has called forth this body and empowered us to aid and assist in restoring this State to the Union. Now let me say to you, that if there is any obstacle thrown in the way of this general progress—whosoever does so must be put out of the way. It has been said by the gentleman from

St. Mary's, [Mr. Smith] with perfect candor and correctness, that since this Convention has been assembled, it has been the misfortune of the Members of this body to read daily in that paper, (the *Times*) harsh epithets, inuendoes and improper insinuations against the acts and conduct of this assemblage. If it is to go forth to the people of Louisiana, and the entire loyal population of the United States that this Convention is a set of drunken men, who on a certain day committed outrages, the most disgraceful :—all this is to be published in large letters in the "*Times*,"—it will certainly carry with it if not contradicted a kind of reputation, which will redound to our injury and the injury of the great cause in which we are all engaged. Suppose a hundred secessionists and rebels should daily assemble about this hall, and that the President of this Convention on account of the noise and confusion, should send out and arrest them. That act would be justified by the very nature of the case, through the exercise of the power vested in every deliberative body. Well sir, what is a small disturbance created by fifty or a hundred men in the street? It is confined to the surrounding walls and by closing the doors and windows, we could exclude the noise and go on with our great work. Therefore, if the power of this Body can be exercised to suppress an abuse of

this kind, how much greater is the power, and how much greater is the necessity for its exercise, when, with a dagger, a villain seeks to cut the very heart strings of the Constitution we are trying to adopt.

The publication comes forth, scandalous and libelous, a tissue of falsehood from beginning to end—of a character most contemptible, and allow me the word—most damnable. I was astonished that any man who pretends to loyalty, could descend so low and so far forget himself as to be the author of, or sanction the publication of the document published in the copper-head "*Times*" of the 22d inst. "He that is not for us is against us," I mean, against the great cause in which we are all engaged. "No man," in the language of Jesus Christ, "can worship God and mammon" at the same time, he must be on the side of the Lord or the Devil; there are but two to serve and there is no middle ground. Although, the rebels may capture Baltimore and Washington, thus intimidating some men—there are but two sides still; a man must either support the Government of the United States or violate his Oath of allegiance, and go down to rebeldom and disgrace. However loyal this Editor may be, whatever may have been his previous conduct, however high his position in the Government of the United States, matters not. These are trying times when the country needs the

benediction of Almighty God, the humble confession of every sinner and his prayer to the Giver of all good that a blessing may rest upon our labors. Therefore, I say sir! that when this is the condition of affairs, the publication of such atrocious falsehoods was a high-handed piece of injustice and that it was an ungodly wrong thus to attempt the striking of a death blow to the purposes and ends of this Convention, and the designs of Major Gen. Banks in calling it.

Would it not have been better for Mr. Thos. P. May, to have inserted in his paper something like this? and it would have been true: "In the Convention yesterday there was a little farce—a little quarrel—arising out of the fact that some of the Members opposed the President while the President in turn opposed the Members—resulting finally in rather a disorderly adjournment." That would not have harmed our noble cause, nor struck a death blow with a sledge hammer at the gentlemen of this Body and the loyal people of Louisiana. Now sir, he has lied and with his eyes open has perpetrated a foul slander and libel, not against an individual merely, but against every Member of this Convention, by printing that which is known to be a base falsehood. Not only, has the "*Times*" propagated this, here in the city of New Orleans, but abroad—thus bringing the great State of Louisiana into

contempt before the authorities of the general Government and the good people of our Nation. Then gentlemen, do you tell me that when this man is brought into this Body, by the power of the law which surrounds us, and he refuses to offer an excuse, but folds his arms and tells you in an insulting manner that he is here by the order of Major Gen. Banks—and not for the purpose of answering to anything we may charge him with? If that does not amount to a second contempt to the authority of this Body, tell me what could? Does it not? [Cries of "Yes," "Yes."] Instead of acting as he has, what should he have done? There was an excuse for him; there is none now. Had he proposed an apology, I would have tried to have been the first to take his hand and pardon him, because I was perhaps, the most severe against him on yesterday. When he entered this Hall, he should have done so with due respect—not that we are Almighty God or his disciples, but because we hold a great power vested in us by the Government of the United States and sanctioned by the people. [Applause] If he had then arisen and said: "Mr. President and Gentlemen—I am not the author of the few lines which appeared in my paper" which I believe would have been true, for I think he writes but little himself. "I know nothing personally, of the transaction in this Convention, on yesterday, but some of

my employees, of whom I have many, may have done this in a spirit of prejudice, with a disposition to injure this body, and I, as the responsible Editor of the "*Times*" offer to you sir, and this Convention my heartfelt regrets." Had he done this like a man, he would have been cordially received and pardoned, but when he comes here and bids defiance to this Body, it is as much as to say—"Here you are a mere contemptible set of beings, so continuously drunk and ignorant, so without principles or consideration—that you are beneath my notice. I will not even condescend to inform you that I am ready to apologize at all." I say that such a man should be dealt with in the severest manner; that the President of the United States should be made cognizant as to whom he has made Sub-Treasurer; that the President of the United States and his Cabinet ought to know who is interfering with the proud progress of this Convention. [Enthusiastic Applause.] They ought to know who it is that is throwing obstacles in the way of our armies—in the way of the success of our country and in the way of the returning people of Louisiana.

There is but one way in which to do all this. Offer your resolutions to this effect and thus do justice to God, to man, and to yourselves! Let this man, MAY, know that this is a sacred body; that here, the Great God

has not refused his eye; that we have done works worthy the consideration of this State; Yes, I repeat it, worthy of the consideration of the people of this State and of the people of every country on the face of this earth. [Applause] We are not perfect beings, for no man, though created by God in his own image, is perfect, but notwithstanding we, on yesterday finished a Constitution, which I firmly believe will be acceptable to the people of the State and acceptable to the Congress of the United States. Then we have put the honest, loyal people of Louisiana in their true position. Let the rest go into rebeldom, and there remain.

God knows that if I had been the Commanding General of this Department, though I cannot claim one-tenth part of his capacity, that no evening edition of the "*Times*" should have been issued on yesterday, nor any morning edition to-day. When we find a man who pretends not only to be loyal but the embodiment of loyalty, previous to election, and then find him abandoning his platform as soon as his friends are defeated, and opposing the very ends which he undertook to subserve, simply because they are not promoted to some position—we find in that man a character deeply stained with rebelism. Now sir, if this be so, is it proper for this Convention to allow itself to be thus defamed? If this publication was true, my voice would not have

been raised against it on yesterday, nor would it again to-day, because I fear the truth, if it is against me, while my disposition is to try to be right, and when right I fear neither man nor devil. Then sir, having been here on yesterday, and knowing as does every other Member of this Convention and every man outside, that this publication was a falsehood from beginning to end, I denounce its author and demand the punishment of Mr. Thomas P. May, for contempt of this Convention.

There must have been a motive, an incentive in the publication of that article. Was it to promote the interest of the general government or the state? No Sir! It could not have been. It was to throw obstacles in the way of our work. It *was* perhaps to give a blow indirectly to the military and civil powers that be. It meant to tell the people of this state that this Constitution is corrupt and not to be voted for. *That*, Sir, certainly was the intent and meaning of this publication.

Let us, in conclusion, do justice; let us have no rashness or unfairness. We have, gentlemen, the power to act upon this. We are not only a Convention of the State of Louisiana, but a military power,—created and emanating from no other source than the military power, and existing by virtue of the civil authority

of the Government of the United States. The President of the United States, having then vested us with this power,—there has never been such power vested in any legislative or deliberative body on the face of the earth as in this, unless it was in the Arkansas and Missouri Conventions, which were brought about in the same manner. — The loyal people of this state, within the Federal lines have sent us here, thus embodying themselves. What more power do you want in a matter of this kind than that power which is inherent in the people. In this very Hall, yes, in this very Hall, during the session of the Secession Convention of 1861, I was sitting in that very gallery, when a gentleman entered, bearing an American flag. What was the result? It was such a contempt in the eyes of that august body of rebels that they instantly arrested and incarcerated him in prison. [Cries of "Yes!" "That is so."] Then I do not lie as the "*Times*" does. [Laughter.] If you want nothing but an example of legislative power—there it is. If there is any such thing as the preservation of the dignity of this Convention, let us exercise our power now, and not postpone it until to-morrow, Monday, or any other day. Do it *now!* Let the states of Massachusetts, New York, Connecticut, and all the rest understand that we are the people's loyal Convention, and determined to do our duty. [Applause.]

What is the remedy? There is but one. Let that man go scot free to scandalize this Convention, to-morrow, and until this Constitution goes before the people for its adoption or rejection.—Let him go on with his paper; it necessarily has its influence and may result in the defeat of all our noble plans. It may have this tendency, for it is confederated with rebels and disloyal traitors, rattlesnakes and devils, to thwart our ends. Wherever there is a wrong there is a remedy. SEND THOMAS P. MAY TO JAIL! Let him know that he lives in a land of liberty, but must not abuse that liberty. [Great Applause.] Suppress that infamous, lying paper — that is proper also. Do it I say; and when that is done, we shall have no more copperhead editorials or infamous libels. Again, — do not stop there, — but request the military authorities to ask the President of the United States to withdraw the commission under which he holds office, and remove him from the position which he now disgraces. [Great applause.]

I do not wish to be considered too severe upon a private individual. No! I am only severe upon public acts. God save me from going down so low in the scale of intellect as to persecute any man on account of his private acts. I would not, like miscreants stab a man in the back, nor punish severely the private acts

of the editor of the "*Times*," for I say not a word against any other than public acts. It would be unfair, unjust, and unreasonable, as well as opposed to good policy, for this Convention to adjourn without letting the papers of this town—whether rebel, copper-head, or otherwise—know that this Convention has been a Union one, working with the purpose of perpetuating this Union, and also, for the purpose of liberating this State from the power of the rebels. Do this and you will do justice—you will commit no injustice; but do it at once!

I now call upon the President of this body to arraign at its bar, Thomas P. May. It now sir, [addressing the President,] becomes your solemn duty, in the name of our nation, our liberty, and the vindication of character, to inform Mr. May of his wrong and then to sentence him to the necessary penalty—certainly, not less than imprisonment until the end of the Convention—the suppression of his paper until the Convention adjourns *sine die*.

Thereupon the following resolutions were then offered:

"*Whereas*, Thomas P. May, Esq., editor and proprietor of the newspaper called the *Times*, published in the city of New Orleans, has frequently, within the past six months, published articles in said paper which, in the opinion of this Convention, were disloyal in their senti-

ments to the Government, and many of which were in contempt of this Convention; and, whereas, in the issue of said paper of the 22d inst., a gross libel was published upon the President and Members of this Convention, and upon being brought to the bar thereof, has refused to purge himself in any manner of said libel: therefore, be it

"*Resolved*, That Thomas P. May, Esq., for his said contempt committed upon the President and Members of this Convention, in publishing in said newspaper said libel, shall be imprisoned in the Parish Prison of the Parish of Orleans for the space of ten days, unless this Convention sooner adjourns.

"*Be it further Resolved*, That the military authorities of this Department be respectfully requested by this Convention to suppress the publication of said newspaper.

"*Be it further Resolved*, That the President of the United States be respectfully solicited by this Convention to remove the said Thomas P. May, Esq., from the office of Assistant Treasurer of the United States in New Orleans, that he now holds; and that the Sergeant-at-Arms be directed and authorized to carry these resolutions into effect."

These resolutions were adopted by nearly a unanimous vote.

1. The question is, does the fact that the Comm^n is authorized to elect a Sergeant-at-arms vest that body or that officer with magistrical powers?

2. What are historically the powers assumed by Conventions in relation to

(a) the internal police

(b) the external "